

Before the
FEDERAL COMMUNICATION COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 98-146

In the Matter of)
)
Inquiry Concerning Deployment of)
Advanced Telecommunications Capability)
to All Americans in a Reasonable and)
Timely Fashion, and Possible Steps to)
Accelerate Such Deployment Pursuant to)
Section 706 of the Telecommunications)
Act of 1996)

REPLY COMMENTS OF MCI WORLDCOM, INC.

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REPLY COMMENTS OF MCI WORLDCOM, INC.

MCI WorldCom, Inc. ("MCI WorldCom") hereby files its reply to comments submitted in response to the Notice of Inquiry in the above-captioned proceeding.¹

As many of the Comments filed in this proceeding indicate, although broadband deployment is progressing rapidly in some places and for some consumers in the United States, this is not the case for all Americans. The Commission can and should take action to promote the deployment of "last mile" advanced services for residential and small business customers located in urban and rural areas. At the same time, incumbent local exchange carriers (ILECs), interexchange carriers (IXCs), Internet service providers (ISPs) and utility companies continue to deploy fiber optic capacity at breakneck speeds. Because these backbone facilities are being deployed sufficiently, no Commission action is warranted.

¹ In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146 (Advanced Services Order), Notice of Inquiry, FCC 00-57 (rel. Feb. 18, 2000) (Notice of Inquiry).

I. BROADBAND XDSL SERVICES CAN BE MADE AVAILABLE TO GREATEST POSSIBLE NUMBER OF RESIDENTIAL CONSUMERS BY REQUIRING ACCESS TO THE PERTINENT UNBUNDLED NETWORK ELEMENTS AND CLEC-TO-CLEC LINE SHARING

The provision of so-called "last mile" wireline advanced services, without timely and concerted action by the Commission, will develop with the same monopolistic characteristics as the original Bell system. The Commission should not be drawn in by misleading comments by GTE that equate rapid deployment of backbone fiber by CLECs to parity amongst CLECs and ILECs to provide xDSL and broadband *services* to all Americans.² While CLECs may have built or acquired sufficient backbone capability to transport data from central offices or over their own networks, the ILECs still own the "last mile" copper loops.

If given the opportunity, ILECs will take any and all steps necessary to dominate the advanced services market, to the exclusion of CLECs and ISPs. For example, Bell Atlantic asks for the Commission's assistance in extending its monopoly into advanced services, by requesting that the Commission exempt advanced services from section 271's interLATA restrictions.³ However, the Commission already has ruled - correctly - that xDSL and other advanced services are "telecommunications services" and therefore are subject to the market-opening requirements of 271.⁴ Similarly, as was noted in the comments filed by the Commercial Internet Exchange Association (CIX), "ILECs can offer []bundled packages at artificially low prices, due to their ability to engage

² See Comments of GTE, CC Docket No. 98-146, filed March 20, 2000, at 17.

³ Comments of Bell Atlantic, CC Docket No. 98-146, filed March 20, 2000, at 7.

⁴ In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Memorandum Opinion and Notice of Proposed Rulemaking, released August 7, 1998, at ¶ 35.

in cross-subsidization."⁵ CIX points out that this bundling of services can harm rural and residential customers most, and cites an example of at least one ILEC that "refuses to provision residential ISDN, offering instead residential xDSL access packaged with the ILEC's ISP service."⁶ It is critical that the Commission keep the advanced services market as open as possible, which requires that ILECs are not allowed to provide services in a discriminatory manner.

The Commission needs to deny monopoly and engender competition by promoting the ability of non-ILECs - either ISPs, CLECs, or other entities - to provide advanced services. As was pointed out by Prism Communications, the Commission should be "vigilant in guaranteeing" that CLECs have access to UNEs and interconnection arrangements.⁷ This highlights the importance of permitting unbundled access to network elements such as DSLAMs and packet switches, as well as permitting CLEC-to-CLEC line sharing.⁸ In addition, "[t]he Commission must guard against the attempts of incumbents to 'upgrade' their network with fiber facilities without making reasonable accommodations for copper-based, advanced technologies."⁹ Accordingly, the Commission should recognize that any rapid deployment plans for residential and small business customers that are centered upon ILECs, will only lead to monopoly conditions in a market that has the opportunity to

⁵ Comments of Commercial Internet Exchange Association, CC Docket No. 98-146, filed March 20, 2000, at 15 (CIX).

⁶ Comments of CIX, at 16.

⁷ Comments of Prism Communications Services, Inc., CC Docket No. 98-146, filed March 20, 2000, at 1 (Prism).

⁸ Comments of MCI WorldCom, Inc., CC Docket No. 98-146, filed March 20, 2000.

⁹ Comments of Prism, at 5.

develop free of such constraints.¹⁰

II. THE COMMISSION SHOULD INITIATE A PROCEEDING TO EXAMINE THE APPROPRIATE REGULATORY REGIME FOR BROADBAND SERVICES PROVIDED OVER CABLE FACILITIES

MCI WorldCom strongly disagrees with the National Cable Television Association's ("NCTA") claim that two-way broadband facilities used by cable operators to provide high-speed Internet and data services to their subscribers, are generally not "telecommunications services" as that term is defined by the Telecommunications Act of 1996.¹¹ According to NCTA's belief, neither Section 706 nor Title II authorizes the Commission to regulate cable's deployment of broadband facilities or its provision of advanced broadband cable services to subscribers.¹² NCTA's comments underscore the need for the Commission to immediately initiate a proceeding to examine the regulatory paradigm that should apply to the provision of cable-based advanced services. Among the issues the Commission should consider, are whether cable's deployment of local broadband services constitute telecommunications or cable services, and the imposition of an open access requirement for cable operators. Resolution of those issues will provide important guidance both for firms providing broadband services over networks initially designed only to support cable

¹⁰ See Comments of Jato Communications Corp., CC Docket No. 98-146, filed March 20, 2000, at 7, noting that deployment of its DSL services for businesses in "Tier II and III markets has been unreasonably delayed due to high and often unpredictable collocation costs and to excessive delays in loop conditioning for advanced services." Jato claims that the same problems exist with respect to deployment for residential customers, caused by ILEC "delays" of months and months, and lack of cooperation.

¹¹ Comments of National Cable Television Association, CC Docket No. 98-146, filed March 20, 2000, at 4-5.

¹² *Id.* at 5.

services, and for telecommunications and cable firms providing merged services.

The implications of NCTA's claim would be far-reaching. NCTA would have entities that are provide the same type of service subject to different regulatory regimes. Cable operators should not be exempt from Title II regulation simply because they use a different kind of transport medium than other service providers. All wireline providers of advanced telecom services should be subject to the fundamental requirements of Title II.

In MCI WorldCom's view, cable systems provide "local exchange" and "exchange access" services over networks initially engineered for cable service. There is no dispute that local exchange services and exchange access for interstate and intrastate services are telecommunications services subject to the generally applicable requirements of Title II, including sections 201, 202, and 251. For example, AT&T has never denied that its future provision of voice services over cable plant would be classified as a CLEC service under section 251. The area of dispute is whether cable-based broadband (versus narrowband) local services, likely to be used primarily for Internet access, should be classified as telecommunications services subject to the requirements of Title II, or as cable services subject to the requirements of Title VI. Broadband local services, including those used for access to Internet services, are "telecommunications services" under the plain language of the Act and under the "functional approach" adopted by the Commission, which focuses on the nature of the service rather than the type of technology used to provide the service.¹³ Just as broadband services provided by ILECs are telecommunications services,¹⁴ broadband services that compete with these

¹³ Report to Congress, ¶ 86, In re Federal-State Joint Board on Universal Service, CC Docket No. 98-67 (rel. April 10, 1998).

¹⁴ In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Memorandum Opinion and Notice of

ILEC services and that run on networks also used to provide cable services are telecommunications services. The fact that the facilities are also used to provide a non-telecommunications service does not make the local broadband service any less of a telecommunications service or local exchange service, or the provider any less of a telecommunications carrier. An entity may be “treated as a common carrier under this [Act] . . . *to the extent it is engaged in providing telecommunications services.*” 47 U.S.C. § 153(44).

Cable cannot avoid the obligations applicable to all providers of local telecommunications services by trying to categorize its local broadband service as a cable service. No good reason exists to treat broadband local services provided over traditional telecommunications networks differently from functionally equivalent services provided over cable systems. Indeed, the same fundamental, pro-competitive obligations of nondiscrimination and open access should apply both to broadband telephony and broadband cable networks.

III. THE COMMISSION SHOULD ENCOURAGE THE DEVELOPMENT OF AN MMDS-BASED "THIRD PIPE" FOR BROADBAND SERVICES

Any action the Commission can take to promote the development of MMDS and other wireless advanced services technologies should be encouraged. The Commission’s recent public notice announcing the opening of the initial filing window for applications for two-way multipoint distribution service and ITFS is an important step in this regard.¹⁵ As Sprint Corporation points out

Proposed Rulemaking, released August 7, 1998, at ¶ 36.

¹⁵ Mass Media Bureau, Commission Announced Initial Filing Window for Two-Way Multipoint Distribution Service and Instructional Television Fixed Service, DA 00-666, released March 23, 2000.

in its comments, fixed wireless services through MMDS represents the single most effective means of providing broadband service to rural and underserved Americans, and a critical third facilities-based competitor to DSL and cable.¹⁶ The two dominant methods of broadband access, DSL and cable, are provided to residential consumers largely by incumbent service providers under monopolistic “take it or leave it” conditions. As the Commission itself observed recently, ILECs are outstripping CLECs 17 to 1 in deploying xDSL to residential consumers.¹⁷ In this dubious environment, fixed wireless through MMDS offers a critical facilities-based alternative to the existing providers and a solution to the expense and delays of constructing last-mile broadband capabilities. Wireless can also help bridge the broadband divide by offering service to areas where cable or DSL service cannot be economically deployed, and can be provided by non-incumbent providers.¹⁸ Any actions the Commission can take to promote wireless deployment should be encouraged.

¹⁶ Comments of Sprint Corporation, CC Docket No. 98-146, filed March 20, 2000 at 2-3 (Sprint).

¹⁷ See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98, Third Report and Order, FCC 99-238 (rel. Nov. 5, 1999).

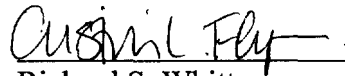
¹⁸ Comments of Sprint, at 3.

IV. CONCLUSION

For the foregoing reasons, MCI WorldCom urges the Commission to take the recommended measures discussed herein to further promote the deployment of advanced services.

Respectfully submitted,

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A handwritten signature in cursive script, appearing to read "Cristin Flynn", is written over a horizontal line.

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CERTIFICATE OF SERVICE

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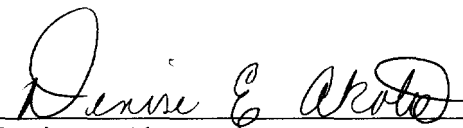
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